MONTANA LEGISLATIVE HISTORY

Chapter 334 1994

Bill H 1017 S _____ Original bill & history ____C

H. Committee on Natural Resources			S. Committee on Judiciary		
Hearing Date(s)	Jan 31	✓C	Hearing Date(s)	Feb 24	✓C
	Feb 02	✓C		Mar 06	✓C
	Feb 16	✓C		Mar 09	✓C
	_____	____C		_____	____C
Date Out	Feb 16	✓C		Mar 09	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

PROPOSED CHANGES TO HOUSE BILL NO. 1 017
AGREED TO BY MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS (MARLS)
AND MONTANA ASSOCIATION OF PROFESSIONAL PLANNERS (MAPP)

Page 3 (line 5) – 4.1 to read:

Irregularly shaped tract means a parcel of land other than an aliquot part of the United States Government Survey section or a United States Government lot, the boundaries or area of which cannot be determined without a survey or trigonometric calculation.

Page 4 (line 2) – (8) to read:
"Final plat" means the final drawing of the subdivision and dedication when required prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

Page 5 (line 17) – (12) to read:

"Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than forty (40) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles or mobile homes. A subdivision shall comprise only those parcels of less than (40) forty acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Any 1/16 aliquot part of a United States Government section or any United States Government lot shall be deemed forty (40) acres or more for the purpose of this act.

Page 6 (line 17) – 11-3882 to read:

Surveys required – exceptions – standards for monumentation. (1) all divisions of land for sale other than a subdivision after the effective date of this provision into parcels which cannot be described by aliquot parts of a United States Government section or a United States Government lot must be surveyed by or under the supervision of a registered land surveyor.

Page 9 (between lines 13 & 14) – (d)

The transfer of interests in a parcel of which has been segregated from a larger tract by the acquisition of State Highway right-of-way.

Page 22 (line 23) – 11-3867

Review of final subdivision plats and Certificate of Survey by examining land surveyor. (1) The governing body may require that the final subdivision plats and Certificate of Surveys be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the subdivision plat and Certificate of Survey meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certification on the subdivision plats and Certificate of Survey; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a subdivision plat or Certificate of Survey in which he has a financial or personal interest.

Chairman Shelden opened the meeting to the opponents of HB 1037.

H. S. Hanson, Montana Technical Council, spoke in opposition. His comments are exhibit 2.

Paul Brunner, Missoula realtor, mentioned the newspaper articles that have told of misleading advertising about Montana land for sale. He said that this summer and in the year to come there will be a real onslaught on our land. He called HB 1037 "A Developer and Land Rapists Act" and said the bill guts SB208 and everything we are trying to do. He stated that it rips up the enforcement mechanism. He questioned the local people's ability to handle the job themselves. He felt HB 1017 was a good bill and would help to make SB 208 workable.

Don L. Kinney, Montana Technical Council and MAPP, spoke next in opposition to HB 1037. His statement was also written and left with the secretary and is exhibit 3.

Hal Price, Intergovernmental Relations, stated there had been a lot of discussion on the park requirement--the county does not have to accept land but can accept cash instead. He said HB 1037 was a complete rewrite of SB208 and would put us right back where we were a year ago as far as controlling subdivisions.

Helen Posewitz, League of Women Voters, was the next speaker. Her testimony is exhibit 4 and part of the record.

Rick Mayfield, Planning Director, was the next speaker opposed and stated he felt people who buy subdivided land should have some rights, too--even if from other states. He felt HB 1037 takes these away. He supported HB 1017.

Tom Mather, Montana Association of Realtors, Great Falls Chamber of Realtors, Montana Home Builders Assn., was the next speaker but out of turn as he supported HB 1037. He said they were interested in the economic, orderly growth of the state. He chastised Mr. Brunner and said he did not represent the Montana Association of Realtors.

Dean Zennicker, Montana Assn. of Counties, stated they were opposed to HB 1037 and requested that it do not pass.

Robert Noe, Stillwater County Commissioners and Montana Land Title Assn., was the next opponent speaker. He stated since the effective date last July they have had many ten plus acre plots and stated their opposition to this. He said they support HB 1017 with amendments. His testimony is exhibit 5.

Phil Tawney, Environmental Information Center, stated they were very much opposed to HB 1037 and in favor of HB 1017. He stated it was unfortunate people would come in and try to gut a bill that hasn't had a chance to work.

Rebuttal was given by Rep. Seifert and Herbert George.

HB 1017 was opened for a hearing by Vice-Chairman Bradley.
Rep. Shelden, the chief sponsor, was the first to speak in support of HB 1017. He stated the people of his county that administers SB 208 had urged him

not to weaken the bill. So he said he was happy to introduce HB 1017 to try to correct some of the problems that through the year have surfaced. He said HB 1017 for the most part just changes a word here and there and that there are only four substantive changes which will make SB 208 more workable.

Hal Price, Intergovernmental Relations, gave a brief summary of how HB 1017 developed. He said they had held ten different meetings in various parts of the state which were attended by over 500 people. They also had requested written testimony from people that could be identified as being interested in SB 208.

Jim Richards, Intergovernmental Relations, was the next speaker. He said HB 1017 proposes to make the law more effective and correct some of the technical problems. He went through the main changes that HB 1017 will make in SB 208: changes definition of subdivision to less than 40 acres; broader exemptions because of increased acreage; allows agricultural land to be transferred without going through platting; allows a relocation of a common boundary line; would allow county planning boards to waive requirements for environmental assessments in certain situations; and a new way to handle the park dedication requirement--land can be deeded to a private owner's association to be used for the same purpose, parks or playgrounds.

Tom France, Flathead Tomorrow, stated their support of the bill but said they were opposed to the removal of the environmental assessment part and felt there should be land use planning language employed rather than the less than 40 acre definition.

H. S. Hanson, Montana Technical Council, stated they were the people who did the work in the field and they rose in support of HB 1017 with some additional amendments which are exhibit 6. He then introduced the following three speakers.

Don Kinney, Montana Association of Professional Planners, stated they felt HB 1017 with the amendments presented by Mr. Hanson would make SB 208 a much better bill.

Dave Stahly, Consulting Engineers of Montana, was the next speaker and his testimony is exhibit 7.

Jim Spring, Montana Association of Registered Land Surveyors, stated they very much favored strong, good controls; and favored HB 1017. He said theirs was a matter of technical concern not of philosophy. One change he felt should be made was the effective date--make it July 1 so projects underway now could be finished.

Rick Mayfield, Bozeman Planning Board, was the next proponent speaker. He had one more amendment he would like considered-- that where land has been resubdivided the park requirement be waived.

Gerald J. Nealy, Clerks and Recorders Assn., spoke next and his testimony is exhibit 8. This contains suggested amendments.

Julie Hacker, representing citizens of Blackfoot Valley, spoke next and her testimony is exhibit 9.

Opponents were called for and the first to speak was:

Herbert George, Montana Assn. of Realtors, and his testimony is exhibit 10.

Frank Montibeller, Jr., Helena Property Owners Assn., stated he rises in opposition to HB 1017 and presented a written statement to that effect to the secretary and this is exhibit 11.

Bill Diehl, examining land surveyor, feared the requirement of 40 acres or less would cause subdividers to divide into as many lots as possible and so cause high density in remote areas. He felt what was needed is zoning. He said of environmental assessment--experts can't agree on suitability of land for human occupancy so the county planning boards still have to guess, he felt the survey was a much better tool for or against a subdivision. He said SB 208 and HB 1017 had terms and conditions contained therein that were just words with unclear definitions.

During the rebuttal period Rep. Shelden stated that he felt HB 1017 would help SB 208 work, but that they had no illusions that it was a perfect bill.

Questions were asked by the committee.

Meeting adjourned at 12:45.

Respectfully submitted,

ARTHUR H. SHELDEN, Chairman

eas

The following left testimony:
Janet Sperry, AAUW, supporting HB 1017, exhibit 12.
Jean Belangie, teacher, supporting HB 1017, exhibit 13.
Rodney Fink, Stillwater County Planning Board, supporting HB 1017, ex. 14.
Thelma Shaw, Clerk and Recorder Stillwater County, supporting if amended HB 1017, ex. 15.
Barbara McGregor, Yellowstone Cty. Planning Board, supporting HB 1017, exhibit 16.
Sue Bryan, League of Women Voters, supporting HB 1017, exhibit 17.
Merrill N. Kluedt, Yellowstone Co., supporting HB 1017.
C. E. Sandy McPherson, Realtors, Homebuilders Assn., supporting HB 1037, exhibit 18.
Everett Snortland, Montana Farm Bureau, supporting HB 1037.
Cliff Christian, Montana Assn. of Realtors, supporting HB 1037.
Jack Greenway, Bozeman, left a group of 46 written statements in which the people supported HB 1037 and opposed HB 1017, exhibit 19.
A list was signed at the door which includes 23 signatures, exhibit 20.

Ex. 6b

NAME H. S. Hanson Bill No. HB-1017

ADDRESS 1717 11th Avenue Date 1-31-74

WHOM DO YOU REPRESENT? The Montana Technical Council

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Comprising of the Design Professions. We support House Bill 1017.

A) We do the work under the laws and as such better understand whats required to conform to the law.

Senate Bill 208 has been very difficult. The modifications to Senate Bill 208 offered by House Bill 1017 have been throughly studied by our various organizations and are quite workable with some additional modifications. These modifications have been checked with the State Planning of IGR. Speaking on behalf of our support.

Don Kinney of the Montana Association of Professional Planners.
Dave Stahly of the Consulting Engineers Of Montana.
Jim Spring of the Montana Association of Registered Land Surveyors.

Ex. #7

NAME J. David Stahly Bill No. H.B. 1017

ADDRESS 1 South Dakota, Helena, MT 59601 Date 1/31/74

WHOM DO YOU REPRESENT? Montana Technical Council & The Consulting Engineers Council of Montana

SUPPORT XX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

My name is Dave Stahly, I'm one of several here this morning representing Montana Technical Council. I am also Secretary-Treasurer of the Consulting Engineers Council of Montana--one of the professional organizations making up the Montana Technical Council. We in the design professions have always been in favor of proper planning, regulation and review of all developments, in order to minimize undue hardship for future owners.

This idea also applys to subdivision development. There are many social, economic and enviropmental factors that need to be considered when subdividing land. Too many times the developers or subdividers do not have an overall view of these factors. Review and approval by a governing agency with the overall view aids in proper subdivision development.

We feel Senate Bill 208, which was enacted last year, was a step forward. We also feel that this bill, House Bill 1017, further clarifies and strengthens Senate Bill 208. Frankly, we as consulting engineers are not in complete agreement on the 40 acre provision in H.B. 1017. However, we do feel that this is just one part of the bill and feel this committee can come up with the proper parcel size after hearing all of the testimony.

With the exception of being completely clear on the 40

HCA Hearing Ex. 8

COUNTY CLERKS & RECORDERS ASSOCIATION
COMMENTS WITH RESPECT TO HOUSE BILL 1017

THE MONTANA ASSOCIATION OF CLERKS AND RECORDERS FAVORS THE PASSAGE OF HOUSE BILL 1017 WITH CERTAIN AMENDMENTS. WITH SOME NOTED EXCEPTIONS, THESE AMENDMENTS CONFORM TO THOSE SUGGESTED BY THE MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS, THE MONTANA ASSOCIATION OF PROFESSIONAL PLANNERS AND THE MONTANA TECHNICAL COUNCIL.

ONE AMENDMENT PROPOSED BY THE ABOVE GROUPS WOULD ADD AN ADDITIONAL CATEGORY OF EXCEPTION FROM THE REQUIREMENTS OF THE ACT (EXCEPT SURVEY REQUIREMENTS), THAT EXCEPTION BEING THE TRANSFER OF INTERESTS IN A PARCEL OF WHICH HAS BEEN SEGREGATED FROM A LARGER TRACT BY THE ACQUISITION OF A STATE HIGHWAY RIGHT-OF-WAY. WE WOULD REQUEST THAT THE FOLLOWING LANGUAGE BE ADDED TO THAT SUGGESTED AMENDMENT:

> "THE COST OF ANY SURVEY REQUIRED WITH RESPECT TO THIS PARAGRAPH SHALL BE PAID FOR BY THE STATE OF MONTANA."

THIS CHANGE IS SUGGESTED BECAUSE ITS ELIMINATION WILL CERTAINLY RESULT IN THE REQUIRED PAYMENT OF SURVEY COSTS BY A LANDHOLDER INVOLVED WITH THE STATE IN RIGHT OF WAY LAND, AND PROBABLY WILL NOT BE RECOVERABLE BY WAY OF NEGOTIATION OR LAWSUIT.

ANOTHER AMENDMENT SUGGESTED BY THE ABOVE GROUPS RELATES TO THE REVIEW OF THE FINAL SUBDIVISION PLATS AND CERTIFICATES OF SURVEY BY SOMEONE. THE ABOVE GROUPS WOULD AMEND THE BILL TO MAKE MANDATORY THE REVIEW BY AN EXAMINING LAND SURVEYOR. THE SMALLER COUNTIES IN THE CLERKS AND RECORDERS ASSOCIATION WOULD LIKE THE PARAGRAPH ON PAGE 19 OF THE BILL DEALING WITH THIS MATTER TO READ AS FOLLOWS:

> "THE GOVERNING BODY MAY REQUIRE THAT FINAL SUBDIVISION PLATSBE REVIEWED FOR ERRORS AND OMISSION IN CALCULATION OR DRAFTING AND PLANNING BY AN EXAMINING LAND SURVEYOR OR OTHER QUALIFIED PERSON APPOINTED BY THE GOVERNING BODY."

THE REASON FOR THIS SUGGESTED CHANGE IS THAT MANY OF THE SMALLER COUNTIES DO NOT HAVE AVAILABLE AN EXAMINING LAND SURVEYOR, EITHER WITH RESPECT TO APPOINTMENT OR ELECTION.

THE ASSOCIATION ALSO SUPPORTS PARAGRAPHS (3) and (4) OF PAGE 7 OF THE PROPOSED BILL IN WHICH IT STATES THAT THE CLERK AND RECORDER SHALL NOT RECORD INSTRUMENTS WITH RESPECT TO THIS ACT WHICH DO NOT HAVE A PREVIOUSLY FILED CERTIFICATE OF SURVEY OR SUBDIVISION PLAT AND IF THE INSTRUMENT DOES NOT DESCRIBE THE TRACT BY REFERENCE TO THE FILED CERTIFICATE OR PLAT, AND INSTRUMENTS PURPORTING TO TRANSFER INTERESTS IN A PARCEL CREATED PRIOR TO JULY 1, 1973 WHEN THE FILING REQUIREMENTS IN EFFECT AT THE TIME THE PARCEL WAS CREATED.

THE ABOVE PROVISIONS OF THE BILL ARE NECESSARY IN LIGHT OF RECENT ATTORNEY GENERAL OPINIONS WHERE THE CLERKS AND RECORDERS CANNOT REFUSE TO RECORD INSTRUMENTS PURPORTING TO CONVEY LAND IN VIOLATION OF THE ACT, AND THE OPINION WHICH VOIDS DEEDS TRANSFERRED AFTER JULY 1, 1973 IN VIOLATION OF THE SUBDIVISION AND PLATTING ACT.

FOR THE CLERKS AND RECORDERS TO MAKE THE ABOVE DETERMINATIONS MERELY MEANS THAT THEY MUST DETERMINE WHETHER CERTAIN FILING REQUIREMENTS ARE MET AND WHETHER A TRACT IS DESCRIBED BY REFERENCE TO CERTAIN FILINGS.

SUCH DETERMINATIONS ARE CERTAINLY WITHIN THE COMPETENCE OF THE CLERKS AND RECORDERS, CONTRARY TO RECENT ASSERTIONS, AND PROVIDE THE CLERKS WITH LIMITED DISCRETION, A COMMON SITUATION WITH ELECTED PUBLIC OFFICIALS. TO ELIMINATE THAT DISCRETION WILL MEAN THE POTENTIAL FILING OF A MULTITUDE OF DOCUMENTS WHICH YEARS LATER MIGHT BE DEEMED VOID; TO ALLOW THAT LIMITED DISCRETION CAN MEAN THE ELIMINATION OF SEVERE LEGAL PROBLEMS TO INNOCENT PARTIES.

Gerald J. Neely
Lobbyist
Clerks & Recorders Association

January 31, 1974

TO Natural Resources Committee
FROM Concerned Citizens of the Blackfoot Valley --Julie Hacker**

We live on a cattle ranch at Potomac in the Blackfoot Valley of Missoula County. I wish to speak on behalf of myself, my family, and the concerned citizens of my community. I am presently serving on a local planning group which is gathering information to help form a county-wide plan.

Here in Western Montana our beautiful valleys are rapidly becoming victims of suburban sprawl and we feel that it is the burden of the government of our state to help us prevent what has happened to rural communities in other areas from happening to the Blackfoot Valley.

The Blackfoot has traditionally been an agricultural--ranching and timber-producing area with low population. In recent years, however, some ranch land has been sold, divided into small parcels and re-sold as residential acreages or ranchettes. The Blackfoot is the only valley in Missoula County which has not been too seriously affected by subdivision and development but it is causing problems and citizens are concerned. The farmable land and meadow land on the valley floor is surrounded by timbered mountains which is owned by private and public interests. Ranch sizes vary, but in our area it takes 45-50 acres of land to graze one cow during the summer and 2 acres of native meadow to raise enough hay to winter the same animal. Most places are family operations. Numbers of residents remained the same.

Present subdivision activity in our community features parcels of land a fraction above 10 acres--just large enough to escape the present sub-division laws. The developers avoid compliance with the planned development concept and citizen and governmental review. As a community we face two major problems because of this unplanned growth. Our school facilities are crowded and the school district must meet the problem as each crisis occurs. We had a 20% increase this fall from the preceeding year. Our community could double or triple in population in the next few months as people move onto these uncontrolled 7-10 acre tracts.

The other problem concerns the roads and access routes to the subdivisions. Our personal experience with uncontrolled subdivision has prompted me to come here today. A single-lane right-of-use road bisects a portion of our ranch property for a distance of a mile. This narrow, winding road has served three families for several generations but will not handle traffic from the thirty families that are expected to use the road. No provision has been made for widening the road and our family does not feel that we should be expected to furnish land for such a purpose. We feel that developers should arrange for roads before they start selling land.

We believe that H B 1017 will help our community solve our problems through the 40 acre review requirement. It will give the local community and the county government opportunity to assess and review the impact of a proposed subdivision on existing facilities such as schools and roads and provide new residents some assurance regarding education and safety. Subdividers should be good neighbors and be willing to care about and plan for the safety and education of the people who will purchase and live on land they are dividing.

Planning and review will correct many situations before they become problems. A carefully planned subdivision of any size will stand the test of review and be a welcome addition to the community. We feel that a 40 acre size limit is minimal and should not be reduced.

We believe that you should pass this legislation as it is a GOOD NEIGHBOR LAW because it gives all parties affected--old residents, new residents, subdividers, and developers equal opportunity for mutual cooperation in creating communities of the future which will be pleasant places for people.

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Exhibit 10

LAW OFFICES

Keller, Reynolds and Drake

PAUL T. KELLER
MELVIN E. MAGNUSON (1911-1967)
PAUL F. REYNOLDS
GLEN L. DRAKE
F. KEITH KELLER

OF COUNSEL
HERBERT H. GEORGE

SOUTH ANNEX, POWER BLOCK
HELENA, MONTANA 59601
TELEPHONE (406) 442-0230

January 30, 1974

TO: THE CHAIRMAN AND MEMBERS OF THE NATURAL RESOURCES COMMITTEE

Re: House Bill 1017

The following observations are presented in opposition to House Bill No. 1017 on behalf of the Montana Association of Realtors.

This bill, if enacted, would, in my judgment, add to the confusion which has been caused among the public, real estate industry and others as a result of what is commonly referred to as Senate Bill 208, which was enacted by the 1973 legislature. It will compound the invasion of other areas which are covered by other laws. It also, in my judgment, will place burdensome responsibilities upon landowners and subdividers whose land is ready for and being considered for subdivision purposes. These burdens add to the expense of development which are ultimately passed on to the consumer.

For example, to extend the coverage of this law to all divisions of land that are less than forty (40) acres in size creates an inequity and an injustice to landowners. His taxes continue, yet he cannot use his land for the purposes for which it is best suited. This requirement goes far beyond the point of reasonableness in placing restraint upon landowners who may find it practically impossible to sell their land in parcels of more than forty (40) acres in size.

This could also be an inducement to groups of persons to purchase larger tracts of land, and under a pre-agreed upon arrangement, then bring an action for partition of the land according to this pre-arranged agreement which would exempt it from the purview of the act.

With regard to the examining surveyor, there appears to be no need for an examining surveyor. When a survey has been made and a plat prepared pursuant thereto by a licensed surveyor or under his supervision, this should be adequate. The local governing bodies should be able to act upon a plat

so prepared. The only apparent effect of a review by another surveyor would be a delay in the processing by second guessing the first surveyor. If a review is required or necessary, it should be made by an abstractor or an attorney who is familiar with real estate conveyancing.

In the proposed Section 11-3862 (1), it is my impression that if a right-of-way for an existing road borders the land with a strip of land between the parcel and the section line, quarter section, or the quarter quarter section, a survey would be required since the parcel would of necessity be less than forty (40) acres in size.

It, therefore, appears that this provision would not accomplish on its face what appears to be its objective (the exclusion of parcels forty (40) acres or more in size).

Subsection (2) of Section 11-3862 of the proposed act establishes a requirement that a complete survey be made of the entire section each time a subdivision is platted within its boundaries. It is my opinion that this is an unreasonable requirement since a number of subdivisions could be platted within the boundaries of any particular section. This would require that the entire section be surveyed each time a subdivision within its boundaries is platted. It appears to me that the expense involved would be unwarranted, and that the resurveying of a section with each platting could cause problems with other landowners. Here again, the expense of such a survey would be ultimately born by the purchasers of these tracts.

Subsections (3) and (4) of this Section 11-3862 of the proposed act will place an unreasonable burden and responsibility upon the clerk and recorder in requiring him or her to make a judgment as to whether or not all the subdivision requirements have been satisfied before he can record an instrument of transfer. Even though he acts in good faith in his refusal to record in a particular instance, he could be exposed to liability for damages. The county and the state could also be exposed to a lawsuit if it should be established that the refusal to record was not warranted and had resulted in damages to the landowner. You are aware,

the new Constitution removes the sovereign immunity of the state to actions for damages. Adequate safeguards in recording are provided for in Sections 16-2901 through 16-2926, R.C.M. 1947. These sections of the code establish the duties and responsibilities of the county clerk and recorder which appear to be working very well.

With regard to Subsection (5) of this proposed section, it is confusing. If the tract is less than forty acres in size and covered otherwise under the proposed provisions, it would be on the same footing as any other parcel. If it is the intent to place these irregular tracts outside the scope of the definition of a subdivision, it would appear to be designed to cover any irregularly-shaped tract, regardless of size.

Subsection (12) of Section 11-3862 of this proposed bill provides that the Department of Intergovernmental Relations shall, in conformance with the Montana Administrative Procedures Act, "prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of the records of survey." It is submitted that the Administrative Procedures Act (Sections 82-4201 through 82-4225, R.C.M. 1947) does not provide for promulgation of criteria for monumentation or regulations. This act is addressed to the adjudication of grievances at the administrative level and provides for rules and procedures for accomplishing these objectives with certain appeal rights to the courts by an aggrieved party. It provides no authority for the promulgation of standards for monumentation or regulations. It is my opinion that the standards for monumentation is legislative function, and I seriously question whether the legislature can delegate this responsibility.

Section 11-3863 will place restraint upon the governing body in adopting regulations for the implementation of the act and limits its authority by providing that any regulations that they propose to adopt shall be submitted to the Division of the Planning and Economic Development of the Department of Intergovernmental Relations for review prior to adoption. It is reasonable to assume that the local governing body is better qualified than the Department of Intergovernmental Relations to decide what is needed for regulations in its own jurisdiction.

Section 11-3863 will impose further responsibilities upon the governing body by requiring it to prepare and certify written statements when granting certain exemptions that are provided for in the act. Section 11-3863 would also establish regulations and requirements relative to matters concerning environmental degradation in subdivisions which are covered in the Environmental Policy Act and contained in Sections 69-6501 through 69-6517, R.C.M. 1947. It is submitted that environmental assessment should not be made mandatory, but should rather be required by the local governing body when it has sufficient information to enable it to determine the need is sufficient to warrant this additional expense.

The proposed Section 11-3865 contains requirements which have no application to surveying and platting. These requirements more properly belong in a disclosure bill. House Bill No. 1033 will, if enacted, provide for adequate disclosure safeguards to a prospective purchaser of a lot in a subdivision.

As you are already aware, matters involving water pollution in subdivision are covered in Sections 69-4801 through 69-4827, R.C.M. 1947. Matters involving sanitation in subdivisions are covered by Sections 69-5001 through 69-5009, R.C.M. 1947.

Recording laws have been provided in our statutes. Also, county-city planning and others which are addressed to specific subjects are already on the books. In my judgment, our subdivision platting act should not invade these areas except for the purposes of coordination.

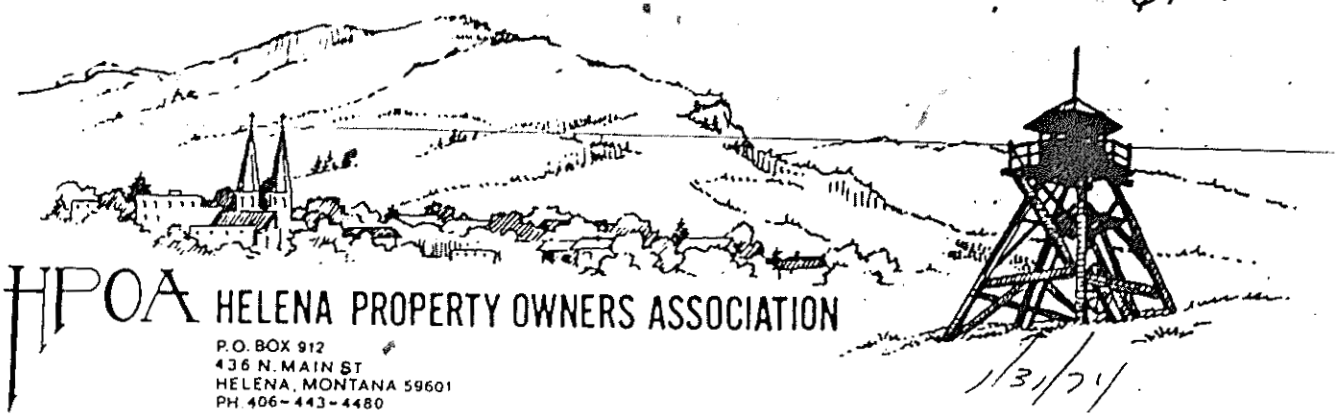
It is my considered judgment that this law, if enacted, would further confuse the issues which are now present with us as a result of the enactment of Senate Bill 208, referred to in the opening paragraph of this statement.

Respectfully,

Herbert H. George

HHG/saw

Ex. # 11



HPOA HELENA PROPERTY OWNERS ASSOCIATION
P.O. BOX 912
436 N. MAIN ST
HELENA, MONTANA 59601
PH 406-443-4480

1/31/74

THE HELENA PROPERTY OWNERS ASSOCIATION RISES IN OPPOSITION TO HOUSE BILL 1017 FOR THE FOLLOWING REASONS:

1. IT WOULD ADD TO THE ALREADY CONFUSED SITUATION CAUSED BY SB208 ENACTED IN 1973.

2. THE LANDOWNER WOULD NOT BE ABLE TO USE HIS LAND FOR THE PURPOSES TO WHICH IT IS BEST SUITED.

3. WOULD CAUSE UNREASONABLE BURDEN AND RESPONSIBILITY TO BE PLACED ON THE CLERK AND RECORDER...POSSIBLE EXPOSING THEM TO LIABILITY FOR DAMAGES IN CERTAIN INSTANCES.

4. ALSO CALLS FOR UNDUE DUPLICATION OF INFORMATION IN SOME AREAS.

FRANK C. MONTIBELLER JR.
Executive Secretary

AMERICAN ASSOCIATION of UNIVERSITY WOMEN

MONTANA DIVISION

January 31, 1991

Testimony before the House Committee on Natural Resources on HB 1017 and HB 1037.

I am Janet Sperry and I represent the Montana Division of the American Association of University Women, an organization comprised of approximately 1200 women in 15 communities.

During the past year we have followed closely the path of SB 208. Having read both of the bills being heard today, which propose to amend SB 208, we wish to voice our opinion that HB 1037 be recommended do not pass. It substantially weakens SB 208, principally by changing the definition of subdivision to mean any division of land into <u>five</u> or more parcels of less than 10 acres(Sec. 2 (11)), and by not making the environmental assessment mandatory (Sec. 4(4)).

HB 1017, however, reinforces and strengthens the intent of SB 208. This bill we support. By changing the definition of subdivision to mean any division of land into one or more parcels of less than forty acres, most proposed subdivisions would fall under the law. The present situation with a ten acre maximum size allows subdividers to circumvent control by setting the size of their lots at ten acres. This would be more difficult to do with a forty acre maximum size.

We do think that there should be no exemption of the environmental assessment as set forth in 3.(3.1). Also the cash donation in lieu of the dedication of park land should be equal to the value of the subdivided, improved land, not the unimproved land (Sec. 4 (2)).

With these two changes, we urge that HB 1017 receive a do pass recommendation. Thank you.

Ex. 13

WITNESS STATEMENT

Name Jean Belangie Date Jan. 31, 1974

Address Potomac, Montana Support ? Yes

Representing School District #11, Potomac, Montana Oppose ? _____

Which Bill ? H.B. 1017 Amend ? _____

Comments:

As supervising Teacher-Principal of School District # 11 Potomac, Montana, Missoula County, I feel it is necessary to speak out in favor of H B. 1017.

I feel it is imperative at this time that we limit growth in our rural areas in order to insure that we can have and protect our quality environment.

At present in the Potomac School District, we are experiencing an average 20% growth per year in our school district. This rapid growth is affecting the quality of the education we can give our students. Classes are becoming crowded and space is limited. If the growth continues, and it will, we will be building within the next 2 or 3 years. We cannot afford to build at this time.

Please leave prepared statement with the committee secretary.

15
Ex. 4

WITNESS STATEMENT

Name Helena Law Date Jan. 31, 1974

Address Columbus, Mont. Support ? V with amendments

Representing Clerk & Recorder Stillwater County Oppose ? _____

Which Bill ? HB 1017 Amend ? _____

Comments:

Stillwater County has had approximately 2300 A. cut up into 10.001A, 10.002A etc. since July 1, 1973 when SB208, the subdivision bill became effective — with approximately 1500 A pending. Something must be done to stop this trend. We would support 40A. tracts.

Our County Planning Board was organized in 1967; & has ably controlled the orderly development of our subdividing in the county. (We) do also should know the problems of our area.

We support the H B. 1017, with amendments

Please leave prepared statement with the committee secretary.

LAW OFFICES
DRYSDALE, McLEAN & SCULLY

DOUGLAS R. DRYSDALE
JAMES A. McLEAN
JOHN P. SCULLY

215 WEST MENDENHALL
POST OFFICE BOX 1122
BOZEMAN, MONTANA 59715
TELEPHONE (406) 587-4425

January 30, 1974

Chairman of the House
Natural Resources Committee
Capitol Building
Helena, MT 59801

Dear Sirs:

I am writing this letter to voice my opposition to HOUSE BILL NO. 1017 and to support HOUSE BILLS NO. 1033 and 1037.

Yours very truly,

Douglas R. Drysdale

kd

Bozeman
REALTY
Phone 587-4538
SERVICE - HONESTY - ACTION
703 West Mendenhall—Bozeman, Montana 59715

GLENN BUSS
BROKER
PHONE 586-2288

January 30, 1974

Chairman of Natural Resources Committee
Capital Building
Helena, MT 59601

Dear Sir:

I would like to express my opposition to H B 1017.

I am supporting HB 1033 and HB 1037.

Sincerely,

John Austin

John Austin

TESTIMONY ON HOUSE BILL 1017

I am Barbara McGregor of Billings, speaking as a citizen sincerely interested in land-use planning through participation as a member of the Yellowstone City-County Planning Board, the Yellowstone Developmental Council (a farm and ranch organization), and the County Zoning Commission.

I certainly endorse the change in a definition of a subdivision from 10 acres to 40 acres. This need has been only too well demonstrated by the influx of 10+ acre plats recorded since July 1, 1973.

and discretion allowed governing bodies in exempting parts or all of the environmental assessment in Sec. 11-3863, subsection 3.1 is well-noted. There are times when all of the strictly environmental assessment is not needed, especially in the city, but it should be remembered that the community impact section of this assessment would be pertinant to all areas.

In Section 11-3867, the amendment reads, "The governing body may require that final subdivision plats be reviewed.....by an examining land surveyor." I feel that this should be mandatory, and suggest changing may to shall, and that the examination be done before recording the plat with the county clerk and recorder.

I sincerely hope that this committee will consider these proposed amendments as a must in meeting future subdivision needs of all Montanans--both urban and rural, by giving this bill a "DO PASS" recommendation. Thank you.

Star Rte Box 34
Bozeman, MT

Chairman
House Natural Resources Committe

As a Montana property owner and Taxpayer I would appreciate your committee killing H.B. 1017. This bill is entirely Too restrictive.

H.B. 1037 more sensibly approaches The Land development problems & I would appreciate your do pass recommendation on this Bill.

H.B 1033, a bill advocating FULL disclosure of Land sales data is also worthy of a do pass recommendation. IT Fully protects the buyer of Lands.

Sincerely
Mary A. Greenway

704 South Willson Avenue
Bozeman, Montana 59715

30 January 1974

House Natural Resources Committee
Montana State Legislature
Helena, Montana 59601

I wish to ask you to oppose House Bill 1017. It jeopardizes the rights of the lower income individual and is a deterrent to the rights of private land ownership.

Instead I would like you to support House Bills 1033 and 1037.

Yours very truly,

L.P. Cooper, Jr.

L.P. Cooper, Jr.

LAW OFFICES

Toiletries
CORDAY
ELIZABETH ARDEN
COTY
HUDNUT

Cameras
EASTMAN
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POLAROID
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PRESCRIPTIONS
ARE THE MOST
IMPORTANT PART
OF OUR BUSINESS

Porter's

Hotel Baxter Pharmacy

Bozeman, Montana

1-30-74

House of Natural Resources Committee.
Helena, Montana

Gentlemen:

I wish you to acknowledge my opposition to Housebill 1017.

I would like to have you support Housebill 1033 and 1037.

Yours truly,

Paul Porter

LAW OFFICES
DRYSDALE, McLEAN & SCULLY

DOUGLAS R. DRYSDALE
JAMES A. McLEAN
JOHN P. SCULLY

215 WEST MENDENHALL
POST OFFICE BOX 1122
BOZEMAN, MONTANA 59715
TELEPHONE (406) 587-4425

January 30, 1974

Chairman of the House
Natural Resources Committee
Capitol Building
Helena, MT 59801

Dear Sirs:

I am writing this letter to voice my opposition to HOUSE BILL NO. 1017 and to support HOUSE BILLS NO. 1033 and 1037.

Yours very truly,

John P. Scully

kd

Bozeman, Mont.
Jan. 29, 1974

House Natural Resources Com.
State Capital
Helena, Montana

I wish to beg your support of House Bill's 1033 and 1037 and your opposition to House Bill 1017. I feel that Bill 1017 is to restrictive.

Sincerely

C. E. Stephenson

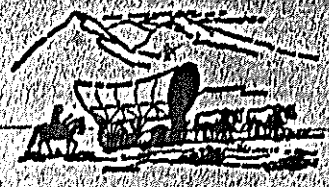
Bozeman Mont
Jan. 29, 1974

Gentlemen,

Please oppose H. B. 1017.

Please support H. B. 1033 & 1037.

Sincerely,
Gloyd Greenway



WAITE & COMPANY

140 EAST MAIN STREET . . . TELEPHONE 586-5444 . . . BOZEMAN, MONTANA 59715

GARDNER C. WAITE
S. J. KAISLER, JR.

January 30, 1974

Chairman of House Natural Resources Committee
Montana Legislature
Helena, Montana 59601

Dear Sir:

We very definitely oppose passage of H.B. 1017 and urge you to vote against it.

Very truly yours,

WAITE & COMPANY

By GC Waite

Bozeman
REALTY
SERVICE - HONESTY - ACTION
703 West Mendenhall—Bozeman, Montana 59715
Phone 587-4538

GLENN BUSS
BROKER
PHONE 586-2200

January 30, 1974

Chairman of Natural Resources Committee
Capital Building
Helena, MT 59601

Dear Sir:

I would like to express my opposition to HB 1017.

I am supporting HB 1033 and HB 1037.

Sincerely,

Hershel Carpenter

Hershel Carpenter

HB 795 Rep. Bradley became acting chairman as Rep. Shelden, the chief sponsor, was the first to testify. He stated the purpose of this act is to authorize and enable public bodies, private individuals and private organizations voluntarily to provide and perserve permanent open-space land anywhere in the state. He stated that sooner or later we are going to have to decide when we would be willing to take land out of agricultural production. He stated he felt this was good legislation and hoped it would receive a do pass.

James H. Goetz, Bozeman, spoke next and his testimony is exhibit 4.

Robert M. Knight, Five Valley River Park Assn., was the next proponent speaker and his testimony is exhibit 5.

Hank Goetz, Greenough, was the next speaker and his testimony is exhibit 6.

Land M. Lindbergh, rancher from Greenough, spoke next and his testimony is exhibit 7.

Paul Smith, Montana Stock Growers, stated he agreed with the philosophy of the bill--that an individual has a right to protect his land. He felt there were some problems and felt the bill should go to a subcommittee to have these worked out.

Tom Windsor, Montana Chamber of Commerce, stated they support the bill with a few amendments.

There were no opponents.

During questions from the committee there was a concern raised that this might become a property tax loophole.

Rep. Shelden resumed the chair and announced that the subcommittee on the subdivision bills, HB 1017 and 1037, consisted of Reps. Schepens, Colberg, and Schye. There will be a subcommittee assigned to HB 795.

Rep. Shelden asked as many subcommittees as possible to report next Tuesday.

Meeting adjourned at 11:50 am.

Respectfully submitted,

Arthur H. Shelden

ARTHUR H. SHELDEN, Chairman

eas

Saturday, February 16, 1974, 10:30 a.m.

SB 558: Chairman Shelden stated while this bill wasn't posted for a hearing today there was a gentleman at the meeting who through a misunderstanding was here to give testimony on the bill.

Ralph Stewart, Lovell Clay, Billings, stated he wished to have the mining of clay removed from the coal strip mining act and put under the same act that covers gravel. He said for years they have reclaimed their strip mining. He said their clay was used in the manufacture of brick and sewer pipe.

During questions it was brought out that in surface area the total acreage that clay mining involves does not exceed seven acres. Mr. Stewart said there were two such operations in the state. He said to start a clay pit there must be an unlimited supply as they must match the original building--many years later. He said they have five pits now--two and possible three that would come under this law. Rep. Schepens asked if he would furnish a photo of his pit. Mr. Stewart said he would do this. Mr. Stewart mentioned that Ted Schwinden, State Lands, was behind them on this request.

HB 1017: Rep. Schepens, chairman of the subcommittee, reported that the subcommittee, composed also of Reps. Colberg and Schye, had done a lot of work. They had called three different meetings--one attended by the surveyors, engineers, realtors; one by the department people; and one by the local county commissioners and planning-board people--to get input and from this came up with the amendments that were before the members. He called on Mike Meloy, Legislative Council, to give further information. Mr. Meloy said that with these amendments any division of land would be a subdivision. Mr. Meloy went through the rest of the amendments. A copy of these are included with the minutes.

Rep. Johnston stated that surveying is not an exact science. He said plats should be examined to see if they were in conflict with any other plats that are recorded--and this is covered in the act.

Rep. Swanberg asked about land within the city limits. Rep. Lien suggested putting it in the bill that it would not apply within the incorporated limits of a town or city. Rep. Swanberg moved that on page 9, following line 22, be added a new subsection (10) to read as follows "This chapter does not apply to any subdivision within the city limits of any incorporated town or city." Motion carried unanimously by those present (Harper, Bradley, Lucas absent).

Rep. Swanberg moved that after line 12 on page 24 to put this amendment "This chapter does not apply to any condominium created solely by the change in the ownership of any existing structure." Motion carried. Reps. Huennekens and Colberg abstained and Harper, Bradley and Lucas were absent.

Rep. Castles moved to amend on page 9 after line 18 by adding a new sub-subsection (d) to read as follows: "(d) A single division of a parcel when the transaction is an occasional sale, as opposed to an ongoing subdivision scheme, determined in accordance with rules established by the department." This motion carried unanimously (absent were Lucas, Harper and Bradley).

Rep. Lien made a motion to move Rep. Swanberg's amendment dealing with condominiums to page 10, line 17 and be a new subsection "g". This motion carried unanimously with the same absent as before.

Two other housekeeping amendments made by the committee were on page 22, line 13 to insert "shall" before the word "affix"; and on page 2, line 18 following the word "transferring" to put a comma, and to put a comma also after "transfer" on line 19.

Rep. Schepens moved that HB 1017 as amended by the subcommittee's amendments, the two housekeeping ones in the paragraph above, and the ones moved on earlier receive a do pass. The motion carried with Rep. Lucas being the only no. Lucas and Bradley had paired and Harper left his written vote favoring the bill.

HB 875: Rep. Huennekens said there was a little clean-up needed and the subcommittee had come up with a number of amendments. They would use the term suspension instead of moratorium of critical rural subdivisions. He said while sections 4 1/2 miles around cities would be exempt, he had had requests from several cities that the suspension be drawn in to their very outskirts. He said classifications would be based on productivity of land. The idea is to keep our most valuable lands from going into subdivisions at least until we decide whether they should or should not be protected for agriculture. He said blocks of land 240 acres or less and divided into not more than 5 parcels would be exempt if not included in the 1 to 4 classes of agriculture. This was to allow some sort of subdivision but to exclude the big ones. There can also be an exemption if a compelling public need is shown, but this too must not include any of the top four agricultural classified lands.

HB 1016: Rep. Shelden stated the only purpose of this bill is to define "subdivision". Rep. Swanberg suggested the bill be amended by taking the definition of subdivision out of HB 1017 and putting it in this bill and to also amend the title to conform. Since there is a possibility that the definition in 1017 might be changed in the legislative process it was the feeling of the committee that it would be safer to phrase it like this "Subdivision has the same meaning as the word is defined in section 11-3861(12)." Rep. Harper moved that HB 1016 as so amended do pass. The motion carried with Rep. Lundgren voting no and Rep. Lucas absent.

HB 1101: Rep. Schepens moved an amendment on page 3, line 2 to read "for agricultural use and public water supplies," which was just a housecleaning amendment to make it conform. Motion passed unanimously (Lucas absent). Rep. Schepens moved that HB 1101 do pass as amended. Rep. Lien seconded it. There was discussion by the members. Rep. Lien moved a further amendment on page 2, line 17, following the word "supplies" by inserting "or which is to be used solely for hydroelectric generating of power." The motion carried with Rep. Bradley voting no, Lucas absent. The committee then took up Rep. Schepens motion of do pass as amended. The motion passed unanimously with Rep. Lucas absent.

Meeting adjourned at 12:30 PM.

Respectfully submitted,

Arthur H. Shelden

ARTHUR H. SHELDEN, Chairman

eas

☐ DO PASS
☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED
☐ BE HELD OVER

STANDING COMMITTEE REPORT

.....19.....

Journal

MR.....

We, your committee on.....

having had under consideration: HOUSE Bill No. 1017

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 11-3861, R.C.M. 1947, TO REDEFINE "SUBDIVISION" TO INCLUDE ONLY PARCELS OF LESS THAN 40 ACRES IN SIZE AND TO DEFINE OTHER TERMS; AMENDING SECTION 11-3862, R.C.M. 1947, TO REQUIRE THAT INSTRUMENTS CONVEYING LAND IDENTIFY THE LAND BY REFERENCE TO RECORDED CERTIFICATES OF SURVEY OR SUBDIVISION PLATS, TO PROHIBIT THE FILING OF NONCONFORMING INSTRUMENTS, TO REQUIRE THE SURVEYING OF IRREGULAR TRACTS OF LAND, AND TO EXEMPT CERTAIN DIVISIONS OF LAND FROM REGULATION; AMENDING SECTION 11-3863, R.C.M. 1947, TO BROADEN THE CATEGORY OF SUBDIVISIONS ELIGIBLE FOR SUMMARY REVIEW AND APPROVAL; AMENDING SECTION 11-3864, R.C.M. 1947, REGARDING DEDICATION OF LAND FOR PARKS AND OPEN SPACE; AMENDING SECTION 11-3865, R.C.M. 1947, TO PROVIDE FOR REVIEW OF TITLE TO LAND PROPOSED FOR SUBDIVISION; AMENDING SECTION 11-3867, R.C.M. 1947, TO MAKE FINAL PLAT REVIEW BY EXAMINING LAND SURVEYOR DISCRETIONARY WITH THE GOVERNING BODY; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 1017 be amended as follows:

amend the introduced bill, Section 1, page 3, line 6, following the words "other than" by inserting the words "an aliquot part of the United States government survey section or";

amend Section 1, page 3, lines 6 and 7, by striking the words "which is not rectangular in shape" and inserting in lieu thereof the words "the boundaries or areas of which cannot be determined without a survey or trigonometric calculation";

amend Section 1, page 4, line 3, following the word "dedication" by inserting the words "required by this act to be";

amend Section 1, page 4, line 13, following the word "Engineers'" by inserting the word "Registration";

amend Section 1, page 5, line 17, by striking the words "or land so divided,";

DO PASS

.....
Chairman

fifteen (15) days prior to the date of the hearing.";

amend Section 7, page 22, line 24, following the words "review of" by inserting the word "final";

amend Section 7, page 22, line 24, following the word "plats" by inserting the words "and certificate of survey";

amend Section 7, page 22, line 24, following the word "by" by inserting the word "examining";

amend Section 7, page 23, line 1, following the stricken word "shall" by inserting the words "and certificates of survey";

amend Section 7, page 23, line 3, following the word "surveyor" by adding the words "before recording with the county clerk and recorder";

amend Section 7, page 23, line 14, following the word "plat" by inserting the words "and certificate of survey";

amend Section 7, page 23, line 16, following the word "plat" by inserting the words "and certificate of survey";

amend Section 7, page 23, line 19, following the word "plat" by inserting the words " or certificate of survey"

amend Section 1, page 5, lines 18 and 19, by striking the words "containing less than forty (40) acres, exclusive of public roadways,";

amend Section 2, page 6, lines 17 through 23, by striking all of subsection (1) in its entirety and inserting in lieu thereof the following new material:

"(1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described by aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.";

amend Section 2, page 9, line 6, following the words "subject to" by inserting the words "the summary review provisions of section 11-3863(5) and";

amend Section 2, page 9, line 18, following the word and punctuation "purposes." by adding the following new sentence: "Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.";

amend Section 2, page 11, line 1, following the word and punctuation "survey." by adding the following new sentence: "Provided, however, that monuments shall be either steel pins, thirty (30) inches in length or more, or concrete markers approximately thirty (30) inches long by five (5) inches square.";

amend Section 3, page 13, line 19, by striking the words "governing body" and inserting in lieu thereof the words "a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved";

amend Section 3, page 13, line 22, by striking the words "governing body" and inserting in lieu thereof the words "planning board";

amend Section 3, page 13, line 21, following the word "assessment" by striking the punctuation "." and inserting in lieu thereof the words "if, in either case, the proposed subdivision is in compliance with the adopted master plan.";

amend Section 3, page 13, line 25, following the word and punctuation "review." by adding the following new sentence: "Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph."

amend Section 6, page 21, line 24, following the word and punctuation "hearing." by adding the following new sentence: "Each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than

Mr. Mather said the state is becoming to bureaucratic, and that it is taking away free enterprise. He felt there should be some control of land division, but must not stifle it. (ATTCH)

Mr. Hansen said that without a fiscal note, this bill would be ineffective.

Mr. Sprague said this bill would raise the cost of home building, and would dictate where each Montanan would live for the next two years.

Mr. Kazara said this must remain at the discretion of the counties. He dou bted that seven committees could come together to solve these problems.

Mr. Brelsford said that the State was not sufficiently staffed to study this problem, and that the counties could prepare their own master plan, that would require subdivisions to conform to the laws.

Rep. Huennekens, in his closing statement, said up to this point, this problem has been placed in the hands of the counties, but nothing has been done. This bill concentrates on agricultural lands, and that they go beyond county boundaries. He said this bill would not conflict with SB 208, but would compliment it. The bill deals solidly with large parcels. It may increase some land values, but would also decrease others. He said most of the opposition for the bill is coming from land developers and realtors.

HB 1016--Rep. Sheldon, sponsor, asked that the definition in HB 1017 be also applied to HB 1016.

Mr. Ward Clarkson, from Department of Health, said that they needed the same language for both bills.

HB 1017--Witnesses appearing on the bill:

Representative Art Sheldon, District 23
Jim Richards, State Planning
Dan Mizner
Jim Hahn, Mt Ass'n of Registered Land Surveyors
Janet Sperry, MT. Division of American Assn of University Women
Helen Poseivetz, League of Women Voters
Paul Brenner, Land Developer, Eco Realty, Msla.
Donald L. Brelsford, Bozeman
Phil Tawney, GT Falls
Paul Smith, MT Stockgrowers Assn
J. David Penwell, Big Sky
Ruth Busli, see HB 1016
Cliff Christian, MT Realtors Assn
Tom Mather, MT Realtors Assn
J. K. Kazara, Roundup
Robert A. Miller, MT Home Builders Assn

Rep. Sheldon, sponsor, said that this bill amends the old bill introduced last year, SB 208. This bill would implement four definite changes: 1) the definition of "subdivision" would be changed to an open-ended type of definition, saying that any division of land would be considered a subdivision; 2) in recording deeds, the county clerks must conform with all provisions of the act; 3) park dedications would apply to those portions concerned; and 4) in cases where commissioners have a master plan, parts of this act would be exempted.

Rep. Sheldon said that the House Judiciary wanted to make sure land owners are properly noticed by requiring that they must notified by registered mail. He said their amendments were basically housekeeping changes.

Mr. Richard submitted amendments (ATTCH) to the Committee he felt that were still problems in the bill. He did not feel that condominuims should be included as land development sites, and that cities should be able to control subdivision within their boundaries. Mr. Mizner also wanted to delete sections in reference to cities.

Mr. Hahn urged that the effective date be moved to July 1, 1974 because of the many projects that were still in progress (ATTACH)

Ms. Sperry said that her organization strongly endorses this bill to conserve valuable land threatened by unplanned subdivision (ATTCH).

Ms. Poseivetz said that time was the basic factor in conserving resources, and would like to see cities included in the law, with no acreage limits on subdivisions.

Mr. Brenner said that people are overriding the law by subdividing just below the standard. He would like to see all divisions included.

Mr. Brelsford said he wanted to see a master plan that would not be as arbitrary as SB 208. The bill is still missing further exemption in use of rural planning and divisional apportionments, but is capable in environmental uses (soil, water).

Mr. Tawney submitted articles relating to the Sundial ranches and the amount of subdivision on these lands. He said 2,300 acres have been subdivided since 1973.

Mr. Smith felt that land delineation should have some input from the commissioners, and that the local community should have the option in subdivision of their land.

Mr. Penwell supported the bill except in the area of condominuims. He said some of this land is already subdivided and questioned how this law would be applied.

OPPOSITION:

Ms. Busli opposed the bill for a number of reasons: 1) landowners should have the right to own and sell their property without restrictive laws; 2) she comes from an area where agriculture is prevalent, and little subdivision takes place. This bill is pointed more at industrial sites, yet effects other areas; 4) it is not fair to propose park dedications where parks are already prevalent; 5) there are already zoning laws; 6) taxes have risen because of subdivision laws; and 7) they oppose giving bureaucratic officers the right in land divisions.

Mr. Cliff Christian said that they are opposed to the definition of subdiv. as "unrestricted". They feel that 40, 80, or 160-acre tracts are not small parcels, and that the act is written in to general of terms. This would cause undue hardship on an agricultural land transaction. (AMENDMENTS AS PER ATTCH).

Mr. Mather felt this was an unnecessary law (ATTCH).

Mr. Kazara generally agreed with the theory of legally dividing the land, but felt that legislatures would be dictating to the counties on what they, themselves could do alone. He felt they should allow counties to select those laws that apply to them.

Mr. Miller felt that there should be a different definition for urban, surburban, agricultural, and recreational land use, and should consider the economic impact on the already climbing costs. He said this would not be necessary where there was a planning board.

Rep. Sheldon, in his closing statement, said that they only want to slow down subdivision in Montana, not to stop it.

There being no further business, the meeting was adjourned to reconvene Wednesday, 2/27 at 11 a.m. in Room 410.

LUKE MCKEON, Chairman

Amend Section 2, page 10, line 20, by deleting the number "(11)" and inserting in place thereof the number "(10";

Comment: This language amounts to a total exemption from the Act of condominiums other than those which are sold prior to construction.

Amend Section 2, page 11, lines 19 through 22, by deleting all of the underscored material;

Comment: The parcels referred to in this language have been separated from an original tract by a state highway and which, consequently, exist independently of the original tract. Transferring interest in such a parcel does not involve a new land segration and thus is not subject to the provisions of the Act.

Amend Section 3, page 14, line 22, following the citation "11-3856" by inserting ", and the proposed subdivision is in compliance with the plan,";

Amend Section 3, page 15, lines 3 and 4, by deleting the words and punctuation "If, in either case, the proposed subdivision is in compliance with the master plan." and inserting a period on line 3 following the word "assessment";

Comment: The rearrangement of language proposed in the two amendments is necessary to clarify the intent underlying the amendment to Section 3 (3.1).

Amend Section 7, page 25, line 6, following the word "plat" by deleting the word "AND" and inserting in lieu thereof the word "OR";

Amend Section 7, page 25, line 9, following the word "plat" by deleting the word "AND" and inserting in lieu thereof the word "OR";

ATTACHMENT I
Jim Richard

AMENDMENTS TO THIRD READING DRAFT
of
HOUSE BILL 1017

Recommended by the Division of Planning
February 26, 1974

Amend Section 1, page 5, line 22, by reinserting the deleted material;

Comment: The deleted language should be reinstated to indicate that for purposes of the Act, the term "subdivision" denotes both the act of subdividing and the land after it's division into parcels.

Amend Section 2, page 9, line 20, by striking the words, "THE SUMMARY REVIEW PROVISIONS OF SECTION 11-3863(5) AND";

Comment: Implicit in the process of summary review provided for by the Act is the right of the governing body or its agent to approve or disapprove. The language in question would defeat the purpose of Section 2 (8) which is to exempt from the review requirements divisions of land which meet certain specified criteria.

Amend Section 2, page 10, lines 10 through 13, by deleting all of the underscored material;

Comment: The purpose of this provision is to simplify the review and approval process of one or two parcels. HB 1017 already accomodates this purpose by allowing subdivisions of five parcels or fewer to be expeditiously approved. The language in question would perpetuate in the Act the controversial concept of the "free split." Provision for the allowance of a free split was purposely omitted from the introduced version of HB 1017 because of the great difficulty local officials have encountered in relating subsequent divisions of land to some prior exempted segregation. Any need for such a provision has been satisfied by HB 1017 through the addition of several selective exemptions and a broadening of the application of the summary review and approval provisions of the Act.

Amend Section 2, page 10, lines 18 and 19, by deleting all of the underscored material;

Comment: This language, if retained, will seriously weaken the Act by stripping cities and towns of the authority to regulate subdivisions within their boundaries. The intense development of urban areas, if uncontrolled, can cause severe problems for municipalities and should not be exempted from mandatory public review and regulation.

ATTACHMENT II

NAME: JAMES HAHN DATE: Feb. 26, 1974

ADDRESS: 3940 Beecraft Lane, Billings, Mont., 59101

PHONE: 248-8104 (Business: 245-6694)

REPRESENTING WHOM? MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS

APPEARING ON WHICH PROPOSAL: HOUSE BILL, No. 1017

DO YOU: SUPPORT? Yes AMEND? OPPOSE?

COMMENTS: OUR ASSOCIATION SUPPORTS THIS BILL AND THE Amendments proposed by the State Department of Planning. We Submit the attached Comments for your Very Serious Consideration.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL 1017;

A. THE EFFECTIVE DATE OF HOUSE BILL 1017 SHOULD BE CHANGED TO JULY 1, 1974. FROM ALL OVER THE STATE THERE ARE PROJECTS REPORTED "IN PROGRESS" UNDER THE PROVISIONS OF CHAPTER 500 LAWS (SB 208). IT WOULD CAUSE SEVERE ECONOMIC HARDSHIPS SHOULD THESE PROJECTS BE SUBJECTED TO NEW RULES PRIOR TO BEING COMPLETED.
THE STATE PLANNING DEPARTMENT HAS ARGUED THAT THEY NEED THE LAW TO BECOME EFFECTIVE UPON PASSAGE WHEREBY THEY WILL HAVE TIME TO WRITE REGULATIONS TO BE IMPLEMENTED BY COUNTIES ON JULY 1, 1974. THE STATE WILL HAVE THE SAME AMOUNT OF TIME IN EITHER CASE.

B. THE " SUBDIVISION " DEFINITION, 11-3861 (12), NOW STATES THAT ALL DIVISIONS OF LAND ARE SUBDIVISIONS REGARDLESS OF SIZE WHICH MAKES 11-3862 (2), THE REFERENCE TO SALES BY ALIQUOT PARTS, MEANINGLESS AND CONFUSING AND SHOULD BE REMOVED FROM THE LAW IF NO ACREAGE LIMIT IS TO BE PLACED IN THE DEFINITION.

C. 11-3862 (10) SAYS THE SUBDIVISION LAW DOES NOT APPLY TO SUBDIVISIONS WITHIN CORPORATE CITY LIMITS. THE INTENT IS NOT CLEAR AND THEREFORE SHOULD BE STRICKEN OR RE-WRITTEN TO SAY WHAT EXACTLY WAS INTENDED.

D. 11-3862 (13) SETS THE TYPE AND SIZE OF SURVEY MONUMENTS THAT "SHALL" BE USED. THIS SHOULD BE STRICKEN FROM THE LAW BECAUSE IT IS NOW CONTAINED IN THE STATE MINIMUM SUBDIVISION REGULATIONS SUB CHAPTER 30.
THERE ARE ALWAYS INSTANCES IN WHICH A LESSER OR GREATER REQUIREMENT FOR MONUMENTATION IS HELD. THESE INSTANCES ARE PRESENTLY DEFINED IN STATE REGULATIONS AND SHOULD THE NEED ARISE CAN BE CHANGED IN THE REGULATIONS WITHOUT AMENDING THE LAW.

BRELSFORD & ASSOCIATES
BOZEMAN, MONTANA 59715

35 E. MENDENHALL
P. O. BOX 1252
TELEPHONE (406) 587-8591

February 20, 1974

Senator John L. McKeon, Chairman
Senate Judiciary Committee
State Legislature
Helena, Mt.

Dear Senator:

I respectfully request the consideration of the Senate's Judiciary Committee to the following amendments to H.B. 1017 as presently written:

Amend line 22, page 14, in paragraph (3.1) by adding after 11-3856:

"or for which a planning and zoning district has been established pursuant to sections 16-4101 through 16-4107 and which has an adopted development pattern based upon a master plan as defined in section 11-3831,"

Also amend line 25, page 14, in paragraph (3.1) by adding after 11-3856:

"or a planning and zoning commission established pursuant to sections 16-4101,"

In Gallatin County, there are two areas for which a comprehensive master plan has been prepared; Bridger Canyon and Gallatin Canyon. Only in Bridger Canyon has the plan been adopted and a planning and zoning commission established. I feel the Gallatin Canyon plan (in modified form) could probably be adopted and used as a development guide if there were some incentive and advantage for the developers and potential subdividers to support and encourage it.

As H.B. 1017 is presently written, a county-wide master plan would have to be prepared and adopted before the exemption from an environmental assessment could be claimed by the developer. This is a significant weakness although the intent is clear and desirable. I realize that the last line in paragraph (3.1) could take care of planning and zoning districts but it is indefinite and does not

Senator John L. McKeon:.....continued

provide the incentive and encouragement needed to plan compatable land-use for critical areas in a county.

Thank you for your committee's consideration of these amendments, for the opportunity to speak before the committee last Tuesday, and for the committee's efforts in our behalf.

Sincerely,

Donald L. Brelsford, P.E.

cc: Senator Paul Boylan

DLB:kn

ATTACHMENT III
JANET SPERRY

Senate Judiciary Committee

2/26/74

The Montana Division of the American Association of University Women, representing 1200 women in 15 communities, stands in favor of HB 1017. During the past year we have followed closely the path of SB 208 and its amendments. We have come to the realization that subdivision regulation is an absolute necessity in a day when our most valuable resource, land, and our most valuable industry, agriculture, are threatened by unplanned subdivisions. We therefore support HB 1017, for it reinforces and strengthens the intent of SB 208. We are particularly in favor of the provision which applies the regulations to all subdivisions of property, regardless of size.

We urge that HB 1017 be given a do pass recommendation.

Thank you.

LEAGUE OF WOMEN VOTERS OF MONTANA

February 26, 1974
Senate Judiciary Committee
Re: Testimony for HB 1017, Amendments to the Montana Subdivision and Platting Act.

The League of Women Voters has long been interested and involved in land use planning. It is a vital and vigorous part of our program as is evidenced by the many hours we have spent in gathering information and in attending meetings on local, state and national levels related to this subject. A number of our members serve on their local planning boards.

We are pleased with the adoption of the rules and regulations pursuant to SB 208 and in particular with the sections relating to citizen participation in land use planning. Nowhere in Montana today is there a greater opportunity for citizen determination than in comprehensive planning for land use. It is local government at its best. Indeed, a throwback to the Town Meeting.

HB1017 amending the Montana Subdivision and Platting Act has our endorsement with the following exceptions:

1. Specifications for monumentation, a House of Representatives amendment, seem unnecessary when one considers that monument specifications are already in the rules and regulations.

2. Most importantly, we can in no way support exemptions of subdivisions in city limits. The present standards allow for ample variance should a particular situation arise. Exemptions of cities and towns from The Subdivision and Platting Act would leave counties which have no planning boards with no guidelines.

We are hopeful that the Montana Subdivision and Platting Act will be extended to cover all subdividing. Acreage limitation only begs to be defied.

LEAGUE OF WOMEN VOTERS OF MONTANA

January 31, 1974
House Committee on Natural Resources
House Bill 1017 - Amendments to the Montana Subdivision and Platting Act.

The League of Women Voters of Montana has followed carefully the development of the Montana Subdivision and Platting Act, from its origination in the 43rd Legislative Assembly, and the drafting of minimum rules and regulations by the Division of Planning, to the amendments being considered here today in House Bill 1017. We have gone on record in support of the intent of the Act, based on our state-wide membership consensus for orderly community growth, and our concern for the protection of the environment and resources of Montana.

Our testimony today addresses two of the major proposed amendments as submitted in House Bill 1017: the definition of a subdivision (Section 1, Item 12), and the waiver of all or any portion of the environmental assessment (Section 3, 3.1).

First, the re-definition of a subdivision to 40 acres from 10 acres receives our strong endorsement. It was apparent even during debate of Senate Bill 208 in the last session that the 10 acre definition was going to be inadequate to permit comprehensive management; the experiences of local governing bodies since July 1, 1973 and the enactment of the law certainly have verified this inadequacy. Indeed, this definition tends to encourage larger uses of land in outlying areas, rather than more orderly development associated with existing services and land uses. We are hopeful for the adoption of this new definition to allow broader application of the Act.

Second, the issue of the Environmental Assessment waiver gives us some concern. This particular aspect of the Act has been a chief target of attack by those who oppose regulation of subdivisions. No doubt, the very term "environmental" has contributed to the polarization of factions around the bill. The result has been a general disregard for a key section of the Assessment dealing with "community impact" (Section 3,4-c). Specifically, a developer is asked to provide information about the size of his planned subdivision, the number of dwellings and occupants, and their potential needs for services. He must consider demands on existing school facilities, safety protection, water and sewage, recreational opportunities and land uses. In addition, there are questions pertaining to the tax revenue situation as it exists prior to and after development.

The League feels it is imperative to examine these aspects of the assessment, as well as those which pertain directly to natural resources and ecological features of the land. Certainly, there are instances where specific sections of the Assessment are not applicable to a given proposed development, such as a

housing complex in an already urbanized area where wildlife and vegetation, for example, no longer exist in a natural state. However, in this very same development, there will be impacts on the social and economic aspects of the community, simply by bringing in additional people, with their attending needs and their contributions. If, as this amendment suggests, the total assessment is waived, critical information such as this will be ignored.

Therefore, the League feels that when an element of the Assessment is not appropriate for a specific case, it can be answered as "not applicable," and should be accompanied by the proposed statement of reasons by the local governing body, But, in NO instance do we feel that the total Assessment should be waived, regardless of the size or location of the proposed development. Due to the inevitable impact of any new subdivision on a community, both positive and negative, its implications socially and economically and environmentally must be a part of the public review process allowed for in this Act.

Susan M. Bryan,
Land Use Study Chairperson,
Montana League of Women Voters

CHRISTIAN, SPRING, SIELBACH
& ASSOCIATES
civil engineering, land surveying
& photogrammetric engineering

2020 GRAND AVE., UNIT 3 PHONE (406) 656-6000 BILLINGS, MONTANA 59102

February 26, 1974

Mr. Luke McKeon, Senator
State Capitol Building
Helena, Montana 59601

Re: House Bill No. 1017
House Bill No. 875

Dear Senator McKeon:

I urge you to please give consideration to House Bill No. 1017 and House Bill No. 875 as outlined below:

House Bill No. 1017

This bill is the result of numerous proposed amendments to Senate Bill No. 208 passed during the 1973 legislative assembly referred to as the "Montana Subdivision and Platting Act".

As a Registered Land Surveyor, I am very much in favor of this bill and during the past year have been active with the Montana Association of Registered Land Surveyors in working with the State Planning Office to develop the necessary amendments. Some deficiencies that are still of concern are:

1. Section 11-3861 (12), the definition of a subdivision states that all divisions of lands are subdivisions regardless of size, therefore

   Section 11-3862 (2), the reference to sales by aliquot parts of a section, would be meaningless and confusing and should be eliminated if the Senate does not choose to add an acreage limit to the definition of a subdivision.

2. Section 11-3862 (10) "This chapter does not apply to any subdivision within the city limits of any incorporated town or city" is not clear as to intent. This should be either stricken or further clarified to outline its intent.

3. Section 11-3862 (13) defines the size and type of survey monuments that "shall" be used. This should not be law but should be regulated by proper subdivision regulations as it is now contained in the State Minimum Subdivision Regulations.

   There are many variables that effect proper monumentation which in some instances, as written, would not be adequate. This should be flexible through the regulation so as to allow for different conditions that exist from county to county.

4. The effective date should be changed to July 1, 1974. A considerable number of projects are in progress throughout the state. These projects were started prior to winter conditions. They are in compliance with the conditions of Senate Bill No. 208 and any change in the law without allowing adequate time to complete these projects, would cause severe economic hardship. This I feel would be morally wrong when in fact these people are trying to abide by the law as presently written.

House Bill No. 875

1. Without any acreage limitations in House Bill No. 1017, this bill would be meaningless as written as it states it would be applicable only for those parcels "which are larger than the maximum sized parcel that is defined" in Senate Bill No. 208.

2. If the senate does choose to add an acreage limit to the definition of a subdivision in House Bill No. 1017, then I would strongly urge you not to be in favor of this moritorium because:

   - It requires a very costly government program
   - It is very questionable if it would accomplish its objective
   - Subdivisions should be controlled by regulations designed to protect the health, safety and welfare of the public but not to restrict a person from the opportunity of living with such regulations.

Thank you.

Sincerely yours,

CHRISTIAN, SPRING, SIELBACH & ASSOCIATES

James B. Spring

James B. Spring

ATTACHMENT-6

MR. CHAIRMAN, MEMBERS OF THIS COMMITTEE, MY NAME IS CLIFF CHRISTIAN, I REPRESENT THE MONTANA ASSOCIATION OF REALTORS.

THE MONTANA ASSOCIATION OF REALTORS STRENUSOUSLY OBJECTS TO THE UNLIMITED ACREAGE DEFINITION FOUND IN H. B. 1017. THE WHOLE PURPOSE OF THE SUBDIVISION AND PLATTING ACT IS THE ADMINISTRATION AND CONTROL OF SMALL PARCELS, OR TRACTS, SEGREGATED FOR BUILDING SITES. THIS ASSOCIATION CERTAINLY DOES NOT FEEL THAT ~~(20)~~ 40, 80, oR 160 ACRE TRACTS FALL UNDER THE DEFINITION OF SMALL PARCELS. UNDER THE CURRENT OPEN ENDED DEFINITION FOUND IN H. B. 1017, ~~HUGH~~ ACREAGES SOLD, FOR WHATEVER PURPOSE, MUST BE CONSTRUED AS A SUBDIVISION UNTIL PROVEN OTHERWISE. THIS INCLUDES AGRICULTURAL LAND SOLD FOR AGRICULTURAL PURPOSES. ALL AGRICULTURAL LANDS ARE SUBJECT TO SECTION 11-3863 (5) AND MUST HAVE A SUMMARY REVIEW BY THE LOCAL GOVERNING BODY, THE DIVISION OF PLANNING AND DEPARTMENT OF HEALTH AND ENVIORNMENTAL SCIENCES, BEFORE THAT LAND MAY BE SOLD TO ANOTHER FARMER OR RANCHER. WE BELIEVE THIS STIPULATION PUTS AN EXTREME HARDSHIP ON AN AGRICULTURAL LAND TRANSACTION, FOR NO JUST CAUSE.

THE UNDERLYING FACTOR IN THE SUBDIVISION AND PLATTING ACT WHICH IS CAUSING AN EXTREME HARDSHIP, IS TIME --- THE TIME IT TAKES A QUALIFIED DEVELOPER TO STEER THRU THE ADMINISTRATIVE CONFUSION AT THE LOCAL LEVEL AND THE TIME IT TAKES TO COMPLY WITH THE UNNECESSARY RED TAPE AT THE STATE LEVEL.

WHY THE CONFUSION AND THE RED TAPE? WE BELIEVE IT IS BECAUSE THE PROVISIONS OF THIS ACT HAVE BEEN WRITTEN IN VERY GENERAL TERMS, LEAVING THE DETAILS TO BE PROVIDED BY RULES AND REGULATIONS WHICH NECESSITATES UNDUE INTERPRETATIONS BY ALL CONCERNED, CAUSING CONFUSION IN

ADMINISTRATION AND COMPLIANCE , THUS INCREASING THE TIME AND ULTIMATELY THE SUBDIVISION COSTS.

MEMBERS OF THIS COMMITTEE, RULES AND REGULATIONS ARE METHODS BY WHICH A GOVERNING BODY ADMINISTERS THE LAWS THAT YOU ENACT. THIS TOOL SHOULD NOT BE USED AS A VEHICLE TO WRITE LAWS, AS IS THE CASE WITH THE RULES AND REGULATIONS THAT GOVERN THE SUBDIVISION AND PLATTING ACT.

LAWS SHOULD BE WRITTEN IN EXTREMELY SPECIFIC TERMS LEAVING AS LITTLE AS POSSIBLE TO INTERPRETATION. CONSEQUENTLY, WE WOULD LIKE TO SUBMIT FOR YOUR CONSIDERATION AMENDMENTS TO H. B. 1017, THAT ADDRESS THEMSELVES TO THAT GOAL.

COMMENTS ON HB 875 and HB 1017

SENATE COMMITTEE HEARING - FEBRUARY 26, 1974

R.A. (Dick) AINSWORTH , President - Montana Association of Registered Land Surveyors

An opening comment on HB875 and then I'll hold my comments to HB1017. HB875 was proposed to cover all parcel creation not covered under the Montana Subdivision and Platting Act (SB208) which under existing law would be creation of all parcels over 10 acres in size. This would keep people from making 10.1 acre tracts to get just around the law and has some merit, however when the acreage limit is taken out of the Montana Subdivision and Platting Act as HB1017 proposes then HB875 becomes meaningless. IF HB1017 PROVIDES CONTROL AND REVIEW OVER ALL PARCEL CREATION THEN WHY DO WE NEED A LAW DESIGNED TO PROHIBIT DEVELOPMENT OF LARGER TRACT DEVELOPMENTS?? THE BIGGIST PROBLEM WITH LARGER TRACT DEVELOPMENTS IS THAT THERE HAS BEEN NO REVIEW OR CONTROL OVER THEM.

ENOUGH SAID ON HB875...on to HB1017. The first area I would like to address is the definition of "Irregularly shaped tract of land"...this definition is good...IF there is a 40 acre size limit on subdivision review. We proposed this to the House committee and they adopted it...based on the 40 acre limit. It does not work when the size limit is no longer in the bill. Under Section 11-3862..1 which deal with when a survey is required again is good with the 40 acre limit and again was proposed by the surveyors...take the size limit out and this does not work.

11-3862...10..(page 10)..excluding all subdivisions within city limits from this act...why? These subdivision must be reviewed also and if they are exempt from this act what review will cover them? This should be taken out of the bill.

11-3862...13..(page 12)..monumentation...this short,all sweeping statement was placed in the bill by the House committee and should be stricken. Standards such as this should be handled in regulations and not the law itself. We have written a detailed set of monumentation standards that will cover all needs, the State has reviewed and adopted them in their regulation as called for in SB208 last year. Times change and we feel this should be left flexable in the regulations so that it is not necessary to change they law as monumentation changes.

11-3864..1..(page 18) under park requirement I would question the may in line 8, page 18 dealing with park dedication on tract over 10 acres in size. SB208 stated that there shall be no requirement when all lots are over 10 acres in size...this appears to say that there may be no requirement??

Section 8 (lines 7 & 8, page 26) Effective date. To make this law effective upon passage is changing the law in the middle of the stream on persons that have started developments, under the law and in good faith. I personally have several projects that were started last fall only to be shut down due to the winter weather. If this section is left as it is presently in HB1017 these people would be in violation of the law before the snow allows us to finish the work on the project. I would propose a July 1, 1974 effective date.

I thank you for hearing my comments and hope you will keep them in mind as you review these two bills. If I can offer any assistance or answer any questions for your committee please don't hesitate to call on me. I will gladly make a quick trip to Helena from Missoula.....(my phone is 728-1880)

MINTUES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

March 6, 1974

The meeting was called to order by Senator McKeon, Chairman, at 11:00 a.m. in Room 442 of the Capitol Building.

THE FOLLOWING BILL WAS HEARD: HB 866

HB 866--Witnesses appearing on the bill:

Rep. Dan Yardley, Livingston
Carron C. Blend, Supt. of Public Instruction

Rep. Yardley, sponsor, said that on an adverse appeal in a school matter, this bill would allow additional information to be obtained. This information would be obtained by an affidavit. This bill also places a 60-day limitation on the appeal, which gives finality to the superintendent's decision. This jurisdiction is not in the present law. Mr. Blend spoke in support of the bill.

SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR GILFEATHER. MOTION CARRIED UNANIMOUSLY.

THE COMMITTEE DISCUSSED THE FOLLOWING BILLS:

HB 160	HB 721	HB 1017
HB 473	HB 875	HB 1024
HB 528	HB 901	HB 1035
HB 542	HB 943	HB 1090
HB 672	HB 965	HB 1101
HB 682	HB 999	SJR 69
HB 719	HB 1003	HJR 66
HB 720	HB 1009	

HB 160--SENATOR DRAKE MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

HB 473--Senator Turnage introduced amendments to the bill which deleted all the material after the enacting clause, and inserted new material as per standing committee report.

SENATOR DRAKE MOVED THE AMENDMENTS BE CONCURRED IN; SECONDED BY SENATOR TURNAGE. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THE BILL BE CONCURRED IN AS AMENDED; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

HB 528--SENATOR TURNAGE MOVED THIS BILL BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION; SENATOR DRAKE SECONDED. MOTION CARRIED UNANIMOUSLY.

HB 901--SENATOR BOYLAN MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR ROMNEY. MOTION CARRIED UNANIMOUSLY.

HB 943--SENATOR BOYLAN MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

HB 965--Senator Turnage said that this bill had some geographic problems. He said that it would have to comply with all local requirements before they would be able to condemn the land on state standards. He said he would agree with uniform standards, and felt that this was not uniform.

SENATOR HARRISON MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR TURNAGE. MOTION CARRIED.

HB 999--SENATOR TURNAGE MOVED TO AMEND SS 2, PAGE 9, LINE 9, BY STRIKING SS 2 IN ITS ENTIRETY; SENATOR DRAKE SECONDED. MOTION CARRIED. He did not feel the child should be held responsible for giving misinformation if he didn't really know what he was talking about.

SENATOR DRAKE MOVED TO AMEND SS 4, PAGE 3, LINES 15-23 BY STRIKING THIS SECTION IN ITS ENTIRETY; SECONDED BY SENATOR TURNAGE. MOTION CARRIED.

SENATOR TURNAGE MOVED THIS BE CONCURRED IN AS AMENDED. SECONDED BY SENATOR DRAKE. MOTION CARRIED.

HB 1003--SENATOR DRAKE MOVED THIS BILL BE CONCURRED IN; SECONDED BY SEANTOR BOYLAN. MOTION CARRIED UNANIMOUSLY.

HB 1009--SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

HB 1017--Senator Turnage said that he still had a question on the "grandfather clause". Senator McNamer questioned the acreage limitation, and the general concensus of the Committee was to set it at less than 20 acres.

The Committee recommended to hold the bill pending amendments.

HB 1024--SENATOR HARRISON MOVED THAT THIS BILL BE NOT CONCURRED IN, UNDER THE STIPULATION THAT IT BE PLACED INTO AN INTERIM STUDY BY WAY OF A RESOLUTION; SENATOR DRAKE SECONDED. MOTION CARRIED UNANIMOUSLY.

HB 1035--HOLD IN COMMITTEE

HB 1090--SENATOR DRAKE MOVED THIS BILL BE NOT OCNCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

HB 1101--SENATOR GILFEATHER MOVED THIS BILL BE CONCURRED IN; SECONDED BY SENATOR HALL. MOTION FAILED

SENATOR TURNAGE MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR HARRISON. MOTION CARRIED.

AMENDMENTS TO HB 1017

Amend the Title, page 1, lines 9 and 10, following the word, "SUBDIVISION" by inserting the words "TO INCLUDE ONLY PARCELS OF TWENTY (20) ACRES OR LESS IN SIZE";

Amend Section 1, page 5, line 22, following the word "land," and punctuation by inserting "or land so divided";

Amend Section 1, Page 5, Line 23, following the word "parcels" by inserting the words "containing twenty (20) acres or less, exclusive of public roadways";

Amend Section 1, Page 6, Line 2, by striking the entire line;

Amend Section 1, Page 6, Line 3 by striking the words and punctu "regardless of its size,";

Amend Section 1, Page 6, Line 5 by reinserting the word "of" at the end thereof;

Amend Section 1, Page 6, Line 5 before the word "which" by inser the words "(sem[illegible] (20) acres or less";

Amend Section 1, Page 6, line 8 by striking the words and punctu "provided, however,"

Amend Section 1, Page 6, lines 9, 10 and 11 by striking all of t material on these lines;

Amend Section 1, Page 6, between Lines 11 and 12 by inserting t following material: "(13) 'Occasional sale' means one sale of [illegible]vision of land within any twelve-month period."

Amend Section 2, Page 7, Line 9 by striking the word "BY" and i in place thereof the following material: "as 1/16 or larger";

Amend Section 2, Page 7, Line 17 by striking the entire line;

Amend Section 2, Page 7, Line 18 by striking the entire line;

Amend Section 2, Page 7, Line 19 by striking the entire line;

Amend Section 2, Page 7, Line 20 by striking the words and punctuation, "subdivision within such section or sections.";

Amend Section 2, Page 8, Lines 16, 17, 18, 19, 20 and 21 by st all of the language on these lines;

Amend Section 2, Page 8, Line 22 by striking the number and punctuation "(5)" and substituting therefor the number and punctuation "(4)";

Amend Section 2, Page8, Line 23 by striking the words "the description of which was not of public record on";

Amend Section 2, Page 8, Line 24 by striking the words and punctuation "or before July 1, 1938, or";

Amend Section 2 , Page 9, Line 4 by striking the number "6" and substituting the number "5" therefor;

Amend Section 2, Page 9, Line 13 by striking the number and punctuation "(7)" and substituting therefor the number and punctuation "(6)";

Amend Section 2, Page 9, Line 17 by striking the number and punctuation "(8)" and substituting therefor the number and punctuation "(7)";

Amend Section 2, Page 9, Line 20 by striking the words and citation "the summary review provisions of section 11-3865(5) and";

Amend Section 2, Page 10, Line 11, following the word "sale" by inserting a period and deleting the words "as opposed to an ongoing subdivision";

Amend Section 2, Page 10, Lines 12 and 13 by striking both lines in their entirety;

Amend Section 2, Page 10, Line 14 by striking the number and punctuation "(9)" and substituting therefor the number and punctuation "(8)";

Amend Section 2, Page 10, Lines 18 and 19 by striking both lines in their entirety;

Amend Section 2, Page 10, Line 20 by striking the number and punctuation "(11)" and substituting therefor the number and punctuation "(9)";

Amend Section 2, Page 11, Lines 16, 17 and 18 by striking these lines in their entirety;

Amend Section 2, Page 11, Lines 19, 20 21, and 22 by striking these lines in their entirety;

Amend Section 2, Page 11, Line 23 by striking the number and punctuation "(13)" and substituting therefor the number and punctuation "(10)";

Amend Section 2, Page 12, Line 3, following the word and punctuation "survey." by deleting the words and punctuation "Provided, however, that monuments shall be";

Amend Section 2, Page 12 by striking Lines 4, 5 and 6 in their entirety;

Amend Section 2, Page 12, Line 7 by striking the number and punctuation "(14)" and substituting therefor the number and punctuation "(11)";

Amend Section 3, Page 14, Line 22 following the citation "11-3865" by inserting "and the proposed subdivision will be in compliance with the plan";

Amend Section 3, Page 15, Line 3 by inserting a period after the word "assessment" and striking the words and punctuation "if, in either case, the proposed subdivision is";

Amend Section 3, Page 15, Line 4 by deleting the words "in compliance with the adopted master plan";

Amend Section 3, Page 15, Line 12 Following the number and punctuation "(4)" by inserting the words "where required";

Amend Section 4, Page 23, Line 10 following the word and punctuation "hearing." by inserting the words "The Subdivider and";

Amend Section 7, Page 25, Line 6, following the word "plat" by deleting the word "and" and inserting in lieu thereof the word "or";

Amend Section 7, Page 25, Line 9, following the word "plat" by deleting the word "and" and inserting the word "or" in lieu thereof;

Amend Section 8, page 26, Lines 7 and 8 by deleting this material in its entirety.

End

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

March 7, 1974

The meeting was called to order by Senator McKeon, chairman, at 11:00 a.m. in Room 442 of the Capitol Building.

The following bills were discussed:

HB 1016
HB 1017
HB 1035
HB 1041
HB 1101

HB 1016--Senator Turnage and Senator Drake questioned Mr. Rich Weddel, from the Dept. of I.G.R. about the necessity for this bill. Mr. Weddel suggested that it was unnecessary to have both the Health Department and I.G.R. regulating subdivision and that he would be amendable to having the Health authority removed. The Committee deferred action on the bill.

HB 1017--The following witnesses appeared concerning amendments to the bill, and also to answer questions.

Mr. Jim Richards, State Planning Department
Senator George Darrow
Rep. Art Sheldon, Libby
Rich Weddel, State Planning Dept.
Cliff Christian, MT Ass'n of Realtors
H. J. Hanson, MT Technical Council
Sandy McPherson, Montana Ass'n of Realtors

Mr. Richards explained all the amendments that were drafted by his department in cooperation with the interested lobbying groups (see attachment). Explanations for some of the revisions are as follows (read from the enclosed, revised photostated copy of the bill):

1) Section 2, page 6 provides for a new definition for survey requirements. Land division not subdivided must still be surveyed.

2) Page 7, line 23, the date was changed to make definite that this law would not effect any transactions from last year.

3) Page 9, new subsection 5 & 6 allows the state to separate the home site from the rest of the agricultural site, so that they cannot go into the home site. Line 20 was striken to take away the exemption concept. S.S. (a) provides for all adjustments of common boundary lines; S.S. (b) requires that all gifts must be surveyed; S.S. (c) accommodates all agricultural people; and S.S. (d) provides for an occasional sale.

4) Page 10, line 14-17 allows for subdivisions created by rent or lease. No survey is needed for this but must be reviewed.

5) Page 11, (9) exempts all condominuims. This was stricken from the bill.

6) Page 11, S.S. (12) was stricken since any remaining

property from a state highway right of way project is not subject to subdivision.
7) Page 16, lines 8 & 9 opens up "summary review".
8) Page 17, S. 4 changes park requirements which must now cover the whole subdivided area.
9) Page 20, S.S. 6 & 7 gives a new method for park allowance. This allows for mobile home parks.
10) Page 21, lines 9-12 gives the government discretionary power to review any dedicated land.
11) Page 23, lines 22-24 provides notice requirements of the governing body.
12) Page 26, the effective date was changed to July 1, 1974.

Senator Darrow, sponsor of SB 617, which was based on the same subject, said his bill was heard before the Local Government Committee, but no consideration was given it because it was felt that HB 1017 was more comprehensive. He stated that the material on appeals procedures which governing bodies must meet on page 13 & 14 of SB 617 was not included in HB 1017. Mr. Richards said that this was covered on page 24, Sect 7, 11-3866, lines 2-10.

SENATOR GILFEATHER MOVED THAT THE DEFINITION OF SUBDIVISION IN THE PROPSED I.G.R. AMENDMENTS INCLUDE ONLY PARCELS OF 40 ACRES OR LESS; SECONDED BY SENATOR HALL.

SENATOR BOYLAN MADE A SUBSTITUTE MOTION TO INCLUDE ONLY PARCELS OF LESS THAN 10 ACRES; SECONDED BY SENATOR MOORE. MOTION CARRIED.

The Committee discussed with Rep. Sheldon the possibility of the House acceding to the amendments without requesting a conference committee. Rep. Sheldon said he could not guarantee the House's acceptance. After discussion, SENATOR MORRE MOVED TO RECONSIDER THIS ACTION. SENATOR HALL SECONDED. MOTION CARRIED UNANIMOUSLY.

The Committee then decided to defer final consideration of the acreage question until the next meeting.

Senator Turnage said that by removing condominuims from the bill, the Committee would be opening up the same problems as before, and that condominuims should be included in the bill. SENATOR TURNAGE MOVED THAT THE FINAL AMENMENT PACKAGE INCLUDE CONDOMINIUMS; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

The Committee postponed all other action on the bill and proposed amendments until the next meeting.

HB 1035--SENATOR MOORE MOVED THIS BILL BE NOT CONCURRED IN; SECONDED BY SENATOR BOYLAN. MOTION CARRIED. This was based on Senator McNamer's comment that this was already included in his abortion bills.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

March 7, 1974

The meeting was called to order by Senator McKeon, chairman, at 6:15 p.m. in Room 442 of the Capitol Building.

Following bills were discussed:

HB 1016
HB 1017

HB 1016--SENATOR TURNAGE MOVED TO AMEND THIS (AS PER ATTACHED STANDING COMMITTEE REPORT; SECONDED BY SENATOR BOYLAN. MOTION CARRIED UNANIMOUSLY. The Department of Planning will be left with this jurisdiction.

SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN AS AMENDED; SECONDED BY SENATOR BOYLAN. MOTION CARRIED UNANIMOUSLY.

HB 1017--SENATOR TURNAGE RECOMMENDED THAT THE AMENDMENTS OFFERED BY THE REALTY LOBBYISTS AND THE DEPARTMENT OF I.G.R. TO HB 1017 BE CONCURRED IN, TO INCLUDE THOSE PARCELS OF LESS THAN 20 ACRES IN SIZE, AND TO ALSO INCLUDE CONDOMINIUMS; SECONDED BY SENATOR HARRISON. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THIS BILL BE CONCURRED IN AS AMENDED; SECONDED BY SENATOR MOORE. MOTION CARRIED UNANIMOUSLY.

There being no further business, the meeting was adjourned at 6:45 p.m. No meeting was scheduled.

McKeon

LUKE McKEON, Chairman

(c) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(d) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

Section 3. **Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act is effective upon passage and approval.

Approved March 28, 1974

CHAPTER NO. 333

AN ACT AMENDING SECTIONS 41-817 AND 41-818, R.C.M. 1947, AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PURCHASE SHELTERED EMPLOYMENT SERVICES AND/OR WORK ACTIVITY SERVICES FOR SEVERELY HANDICAPPED PERSONS; AUTHORIZING THE DEPARTMENT TO PROMULGATE RULES AND REGULATIONS UNDER THIS ACT; PROVIDING FOR THE EXPENDITURE OF FUNDS FOR THIS PURPOSE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-817, R.C.M. 1947, is amended to read as follows:

"41-817. **Definitions.** (1) "*Severely handicapped* person" means any individual:

(a) who has a physical or mental impairment which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure and any other disability, specified by the department in regulations it shall prescribe; and/or

(b) who, because of lack of social competence, mobility, experience, skills, training, or other successful characteristics, is in need of sheltered employment or work activity services in a protective setting.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or

self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including, but not limited to, the establishment, construction, development, operation and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home, rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

(6) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "Work activity center" means a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities (such as activities where the focus is on teaching the basic skills or living), and any purposeful activity so long as work or production is not the main purpose."

Section 2. Section 41-818, R.C.M. 1947, is amended to read as follows:

"41-818. **Purchase of services for severely handicapped persons —determination of eligibility—register of qualified organizations —rules and regulations.** (1) The department may purchase, *sheltered employment services from any sheltered workshop in Montana or work activity services from any work activity center within Montana for severely handicapped persons.* The performance of and payment for such services shall be subject to post-audit review by the state auditor.

(2) The department shall maintain a register of nonprofit organizations which it *and other appropriate state and federal agencies have* inspected and certified as meeting required standards and as qualifying to serve the needs of such severely handicapped or disadvantaged persons. Eligibility of organizations to receive the funds specified by this act shall be based upon standards and criteria promulgated by the department.

(3) The department is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section."

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved March 28, 1974

CHAPTER NO. 334

AN ACT AMENDING SECTION 11-3861, R.C.M. 1947, TO REDEFINE

"SUBDIVISION" TO INCLUDE ONLY PARCELS OF LESS THAN 20 ACRES IN SIZE AND TO DEFINE OTHER TERMS; AMENDING SECTION 11-3862, R.C.M. 1947, TO REQUIRE THAT INSTRUMENTS CONVEYING LAND IDENTIFY THE LAND BY REFERENCE TO RECORDED CERTIFICATES OF SURVEY OR SUBDIVISION PLATS, TO PROHIBIT THE FILING OF NONCONFORMING INSTRUMENTS, TO REQUIRE THE SURVEYING OF IRREGULAR TRACTS OF LAND, AND TO EXEMPT CERTAIN DIVISIONS OF LAND FROM REGULATION; AMENDING SECTION 11-3863, R.C.M. 1947, TO BROADEN THE CATEGORY OF SUBDIVISIONS ELIGIBLE FOR SUMMARY REVIEW AND APPROVAL; AMENDING SECTION 11-3864, R.C.M. 1947, REGARDING DEDICATION OF LAND FOR PARKS AND OPEN SPACE; AMENDING SECTION 11-3865, R.C.M. 1947, TO PROVIDE FOR REVIEW OF TITLE TO LAND PROPOSED FOR SUBDIVISION; AMENDING SECTION 11-3867, R.C.M. 1947, TO MAKE FINAL PLAT REVIEW BY EXAMINING LAND SURVEYOR DISCRETIONARY WITH THE GOVERNING BODY; AND AMENDING SECTION 11-3866, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3861, R.C.M. 1947, is amended to read as follows:

"11-3861. **Definitions.** As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed *by the governing body* to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States Government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership *or use.*

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivison which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication *required by this act to be* prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' *Registration* Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) *"Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.*

(13) "Occasional sale" means one sale of a division of land within any twelve-month (12) period."

Section 2. Section 11-3862, R.C.M. 1947, is amended to read as follows:

"11-3862. **Surveys required — exceptions — standards for monumentation.** *(1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.*

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) *which is created by the reservation of a life estate;*

(f) which is *created by lease* or *rental* for farming and agricultural purposes.

(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(10) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 3. Section 11-3863, R.C.M. 1947, is amended to read as follows:

"11-3863. **Enforcement by governmental subdivisions — adoption of regulations — public hearing.** (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public

utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in *a* newspaper *of general circulation* in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements *for* subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The *department* shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

(4) *Where required the* environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels *where proper access to all lots is provided,* where no land in the subdivision will be dedicated to public use *for parks or playgrounds* and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent."

Section 4. Section 11-3864, R.C.M. 1947, is amended to read as follows:

"11-3864. **Dedications of portions of subdivisions to the public — cash donations in lieu of dedications — waivers.** (1) *A plat of a*

residential subdivision shall show that one-ninth (1/9) of the combined area of lots five (5) acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks *or* playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by *mutual* consent of the governing body *and the property owner* that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to

be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public."

Section 5. Section 11-3865, R.C.M. 1947, is amended to read as follows:

"11-3865. **Required abstract or title insurance — certification by city or county attorney.** *(1) The* subdivider shall submit with the *final* plat a certificate of a licensed title abstractor showing the names of the owners of record of the land to be *subdivided* and the names of lien holders or claimants of record against the land and the written consent to the *subdivision* by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(2) *The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town."*

Section 6. Section 11-3866, R.C.M. 1947, is amended to read as follows:

"11-3866. **Submission of subdivision plat to governing body — notice — hearing — approval — disapproval.** (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body *or its designated agent* for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation *unless the subdivider consents to an extension of the review period.* The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the

environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper *of general circulation* in the county not less than fifteen (15) days prior to the date of the hearing. *The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing.* When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) Upon approving or conditionally approving a preliminary plat, the governing body shall *provide the subdivider with* a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year."

Section 7. Section 11-3867, R.C.M. 1947, is amended to read as follows:

"11-3867. **Filing of subdivision plat with county recorder — review of final subdivision plats and certificates of survey by examining land surveyor.** (1) *The governing body may require that final subdivision plats and certificates of survey* be reviewed for errors and omissions in calculation or drafting by an examining land surveyor *before recording with the county clerk and recorder.* When the survey data shown on the plat *or certificate of survey* meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat *or certificate of survey*, such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat *or certificate of survey* in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for record with the county clerk and recorder before *title to* the subdivided land can be sold or transferred in any manner or offered for sale or transfer. If illegal transfers or offers of any manner are made, the county attorney shall

commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property."

Section 8. Section 11-3870, R.C.M. 1947, is amended to read as follows:

"11-3870. **Vacation of plat — easements of utilities.** (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions; provided however, that when any pole line, pipe line, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats, *certificates of survey,* and other title records recorded *after June 30, 1973, and* prior to the effective date of this act in accordance with the law in force at the time of recording, *and all plats, certificates of survey, and other title records recorded prior to July 1, 1973,* and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

(4) This act shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to the effective date of this act. Any instrument affecting real property which was executed prior to July 1, 1973, shall be deemed to be valid notwithstanding any failure to comply with platting or subdividing requirements in effect prior to July 1, 1973, and shall have the same force and effect as instruments complying with such platting and subdividing requirements."

Approved March 28, 1974

CHAPTER NO. 335

AN ACT TO PROVIDE FOR CITIES OF THE FIRST AND SECOND CLASS AND FOR OTHER CITIES ELECTING TO COME WITHIN THE PROVISIONS HEREOF A STATE WIDE POLICE RESERVE FUND AND PROGRAM; TRANSFERRING AS TO SUCH CITIES TO